

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 772 OF 2022
IN
CRIMINAL APPEAL NO. 234 OF 2022**

Yogesh Shivaji More ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Aniket U. Nikam a/w. Mr. Aashish Satpute, Mr. Piyush Toshniwal
for the Applicant.

Mrs. P.P. Shinde, APP for the Respondent – State.

**CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.**

DATE : 7th July, 2022

P. C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his appeal.
3. The applicant, vide judgment and order dated 5th February, 2022 passed by the learned Additional Sessions Judge, Malegaon,

District Nashik in Sessions Case No. 60 of 2010, has been convicted and sentenced as under :-

- for the offence punishable under Section 302 of the Indian Penal Code (IPC) to suffer rigorous imprisonment for life and to pay fine of Rs.2,000/-, in default to undergo further rigorous imprisonment for 1 year;
- for the offence punishable under Section 201 of the IPC to suffer rigorous imprisonment for 5 years and to pay fine of Rs. 1,000/-, in default, to undergo further rigorous imprisonment for 6 months;

4. The applicant was acquitted of the offence punishable under Section 394 read with 34 of the IPC.

5. All the substantive sentences were directed to run concurrently.

6. Perused the papers. The case of the prosecution rests entirely on the circumstantial evidence. The prosecution has relied on three circumstances i.e. (i) last call received by the deceased Amol allegedly from the applicant; (ii) the recovery of a key and an Alto

car at the instance of the applicant (allegedly owned by the complainant), and (iii) the deceased was allegedly having a love affair with Ujjwala, who was a relative of the applicant.

7. As far as first circumstance is concerned i.e. last call received by the deceased Amol allegedly from the applicant, it appears from a perusal of the cross-examination that the investigating officer i.e. PW-7, had not made any enquiry as to in whose name the mobile number 9423554571 was standing. Prima facie, it appears that except the statement of the investigating officer that the holder of the above mobile number was the applicant, there is no evidence on record to corroborate the said fact.

8. As far as the recovery of a key and an Alto car is concerned, it appears that there are some discrepancies with respect to the evidence of recovery of the said car.

9. As far as motive is concerned, the prosecution case is, that the deceased was having a love affair with Ujjwala, who was a relative of the applicant. Admittedly, the prosecution has not examined

Ujjwala. Prima facie, there is no evidence to show that Ujjwala is the relative of the applicant.

10. It appears that the applicant was on bail, pending trial and that he has not abused or misused the liberty granted to him.

11. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his appeal, on the following terms and conditions :-

ORDER

i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/- with one or two sureties in the like amount;

ii) The applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till his appeal is finally disposed of;

iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

V. G. BISHT, J.

REVATI MOHITE DERE, J.

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